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10/529,123	10/13/2005	Patrick Achenbach		1493

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EXAMINER

GRAVINI, STEPHEN MICHAEL

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/529,123
Filing Date: October 13, 2005
Appellant(s): ACHENBACH, PATRICK

Edward J. Smith
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 14, 2011 appealing from the Office action mailed October 27, 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

As noted by Appellant, the related proceedings have been identified beginning on page 31 of the Appeal Brief.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 13-16, 21-25, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerwey (WO 01/21956) in view of Yamac (US 4,890,395).

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerwey in view of Yamac in view of Roethel (US 1,722,825).

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerwey in view of Yamac or Lagerwey in view of Yamac in view of Roethel (depending upon which claim depends upon dependent claim 17).

Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerwey in view of Yamac in view of Streed (US 3,332,620).

Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerwey in view of Yamac.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

Claim Rejections - 35 USC § 103

Claims 13-16, 21-25, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerwey (WO 01/21956) in view of Yamac (US 4,890,395).

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerwey in view of Yamac in view of Roethel (US 1,722,825).

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerwey in view of Yamac or Lagerwey in view of Yamac in view of Roethel (depending upon which claim depends upon dependent claim 17).

Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerwey in view of Yamac in view of Streed (US 3,332,620).

Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerwey in view of Yamac.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

WO0121956	Lagerwey	3-2001
4890395	Yamac	1-1990
1722825	Roethel	7-1929
3332620	Streed	7-1967

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 13-16, 21-25, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerwey (WO 01/21956) in view of Yamac (US 4,890,395). Lagerwey is a switch cabinet. The current claim is construed under the structure and function of the features. The "adapted to" features don't change the structure and function, because the prior art meets that structure and is adapted to perform the claimed functions. The claimed invention is reasonably and broadly construed in light of the accompanying specification as being disclosed by Lagerwey as comprising:

a power generating wind turbine switch cabinet 4;

at least one wind turbine circuit element (figure 6 page 9 lines 3-34) coupled to the power-generating wind turbine switch cabinet; and

a drying arrangement adapted to prevent water deposition onto the at least one power-generating wind turbine circuit element, the drying arrangement including an air flow device in close proximity to the at least one power-generating wind turbine-like circuit element generating an air flow moving past the at least one power-generating wind turbine circuit element to counteract the water deposition onto the at least one power-generating wind turbine circuit element (figures 5 and 7 and page 7 line 7 through page 8 line 2); or alternatively:

controlling an operational parameter of a wind turbine by at least power-generating wind turbine one circuit element coupled to a switch cabinet (page 9 lines 3 through 34 an operation parameter includes wind, temperature, current flow, all disclosed in Lagerwey); and

generating an airflow in the internal space of the power-generating wind turbine switch cabinet flowing past the at least one power-generating wind turbine circuit element using an air flow generating device to counteract a deposition of condensation water onto the at least one power-generating wind turbine circuit element (page 9 line 35 through page 10 line 28). Lagerwey also discloses the claimed at least one heating device to heat an air in the region of the at least one circuit element (page 6 line 35 because it is inherent that the disclosed heating means the claimed heating device because it necessarily follows that heating occurs), cooling and drain elements (page 6

lines 14-29), and moving air past the cooling element (page 9 line 5). Lagerwey further discloses heating an air in a region of the at least one circuit element (page 6 line 35 because it is inherent that the disclosed heating means the claimed heating device because it necessarily follows that heating occurs), separating water from the airflow at a cooling element, the cooling element spaced apart from the at least one circuit element, and draining the condensation water out of the switch cabinet by a drain element (page 6 lines 14-29), and generating the airflow, heating the air, and activating the cooling element depending on temperature or humidity within or outside the switch cabinet (figure 6). Lagerwey discloses the claimed invention as rejected above, except for the claimed feature of either guiding means capable of directing the air flow from the air flow generating device past the at least one power-generating wind turbine-like circuit element or guiding the generated airflow past the at least one power-generating wind turbine-like circuit element by guiding means. Yamac, another dryer, discloses these features on the face of that reference. It would have been obvious to one skilled in the art to combine the teachings of Lagerwey, with the teachings of Yamac, for the purpose of precisely guiding air flow and maximizing efficiency, while minimizing energy usage.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerwey in view of Yamac in view of Roethel (US 1,722,825). Lagerwey in view of Yamac discloses the claimed invention as rejected above, except for the claimed cooling element to separate water from air flowing by, the cooling element being spaced apart from the at least one circuit element; and a drain element to drain the

water deposition out of the switch cabinet and the air flow generating device capable of the feature to circulate air within the switch cabinet and to move air past the at least one circuit element and the cooling element. Roethel, another airflow apparatus discloses a cooling element **28** to separate water from air flowing by, the cooling element being spaced apart from the at least one circuit element; and a drain element to drain the water deposition out of the switch cabinet at page 2 line 15 and the air flow generating device to circulate air within the switch cabinet and to move air past the at least one circuit element and the cooling element at page 2 line 15. It would have been obvious to one skilled in the art to provide the teachings of Lagerwey in view of Yamac with the cooling element to separate water from air flowing by, the cooling element being spaced apart from the at least one circuit element; and a drain element to drain the water deposition out of the switch cabinet and the air flow generating device to circulate air within the switch cabinet and to move air past the at least one circuit element and the cooling element for the purpose of efficient moisture free operation of electrical and mechanical equipment in a switching environment

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerwey in view of Yamac or Lagerwey in view of Yamac in view of Roethel (depending upon which claim depends upon dependent claim 17). Lagerwey in view of Yamac or Lagerwey in view of Yamac in view of Roethel discloses the claimed invention as rejected above, except for the claimed Peltier element. It would have been an obvious matter of design choice to one skilled in the art to provide a Peltier element to

the heating and/or cooling device since the claimed element would perform regardless of the type of heating and/or cooling element recited.

Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerwey in view of Yamac in view of Streed (US 3,332,620). Lagerwey in view of Yamac discloses the claimed invention as rejected above, except for the claimed humidity circuit element control device. Streed, another wind apparatus, discloses a humidity circuit element control device at column 3 line 10 through column 4 line 66. It would have been obvious to one skilled in the art to provide a humidity circuit element control device for the purpose of efficient moisture free operation of electrical equipment in a switching environment.

Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerwey in view of Yamac. Lagerwey in view of Yamac discloses the claimed invention as rejected above, except for the claimed Peltier element. It would have been an obvious matter of design choice to one skilled in the art to provide a Peltier element to the heating and/or cooling device since the claimed element would perform regardless of the type of heating and/or cooling element recited.

(10) Response to Argument

Response to Arguments

Appellant's arguments with respect to claims 13-28 have been considered but are not persuasive.

Lagerwey in view of Yamac obviousness

Current Office practice guides examination such that claims are to be reasonably and broadly construed, in light of the accompanying specification. If the prior art is capable of performing the invention as claimed with the same structure and function, then the prior art can be used to rejected the claimed invention. In this application, Lagerwey teaches a machine housing 4 which comprising a generator 7 which is mounted around a conical bush 5 (please see page 3 beginning at line 2). Appellant argues that the claimed "power generating wind turbine switch cabinet" is disclosed in Lagerwey, however the cited teachings supports the current Office practice regarding claim construction because the housing structurally functions as a switch cabinet which includes a generator.

The argued "power generating wind turbine switch cabinet" not found in the prior art is not persuasive because on page 9 of Lagerwey, on line 26, the term "switched" is disclosed such that one would know the teachings of that reference would know that the argued and claimed switch cabinet is of the same scope with respect to patentability. Examiner is not constrained to detailing every word in the claim to show that the prior art teaches the claimed invention, in a prima facie anticipation finding. In re Edward K.Y. Jung and Lowell L. Wood, Jr. CAFC 2010-1019 (unpublished). In that decision, the Federal Circuit did not constrain the Office to explain every word in the claim language as it read on the prior art. Rather, if the prior art substantially was a prima facie showing of the claimed invention, then the rejection was proper.

Appellant further argues that the air flow device in close proximity is not disclosed in Lagerwey. The fan 50 in figure 7 of Lagerwey may be outside the generator chamber

46, but it is in close proximity to the circuit element since both are on the same shaft. With respect to the argued airflow, it is inherent that a rotating shaft inside a super atmospheric chamber will generate an airflow because the rotation of the shaft must rotate causing a surface of the shaft to break the non flowing air around it, which further causes airflow around the shaft. Since the shaft is inside the chamber, it "moves past" the circuit element as claimed. Finally, since the super atmospheric chamber pressure is bound by a seal strong enough to support a shaft but loose enough to allow a shaft to rotate, then a small amount of air is permitted to move past the circuit element, since the air from inside the chamber will flow out through the seals. In particular, see figure 6 which shows the Lagerwey switch and page 9 line 26, which discloses the close proximity as claimed. Examiner construes that feature as a mere matter of perspective. The airflow argument is inherent to the teaching of Lagerwey, because that reference prevents water deposition, which could not occur unless there were air flow. The specification does not give a proximity meaning which would define it over the prior art.

With respect to the "guiding means" argument, examiner has amended the rejection of that feature such that the teachings of secondary reference are capable of meeting the intended use of the air flow direction feature. In response to Appellant's argument that the guiding means, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In response to Appellant's argument that Yamac is nonanalogous art, it has been held that a prior art reference must either be in the field of Appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the Appellant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both prior art references, Lagerwey and Yamac, teach structures and functions of drying such that the rejection is proper under current Office practice.

Lagerwey in view of Yamac in view of Roethel obviousness

Again Appellant argues that the intended use and non-related art should not be used to reject the claims. Using the arguments above, intended use and non-related art are not persuasive to overcome the prior art rejections.

Lagerwey, Yamac, Roethel in view of Streed obviousness

Again Appellant argues that the intended use and non-related art should not be used to reject the claims. Using the arguments above, intended use and non-related art are not persuasive to overcome the prior art rejections.

In response to Appellant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

Appellant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically

pointing out how the language of the claims patentably distinguishes them from the references.

Appellant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

In response to Appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

(11) Related Proceeding(s) Appendix

As noted by Appellant, the related proceedings have been identified beginning on page 31 of the Appeal Brief.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/gravini/

Conferees:

/Kenneth B Rinehart/

Supervisory Patent Examiner, Art Unit 3743

/Michael Phillips/ RQAS

